

Exhibit 7

Here's a Switch: A Patent Infringement Defendant Transfers Into East Texas

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It's been a while since IP cognoscenti considered Marshall, Texas a slam dunk jurisdiction for plaintiffs. (Or a [rocket docket](#).) Still, when we heard that [Juniper Networks](#) last week got permission to transfer an infringement case from federal district court in Virginia to the Eastern District of Texas we had to wonder: Are Juniper's lawyers crazy?

Crazy like a fox, maybe. Juniper's lawyers at [Kaye Scholer](#) and [Irell & Manella](#) seem, in fact, to be playing an elaborate game of hopscotch with their client's IP opponent, [GraphOn Corp.](#) And if they have their way, Juniper won't be in Texas for long.

In 2007, GraphOn sued Juniper in Marshall, alleging that it was infringing three GraphOn patents for network security products. Juniper, in turn, sued GraphOn in the Eastern District of Virginia, claiming GraphOn had infringed a Juniper patent dealing with data transmission. (GraphOn claims Juniper bought the patent for the sole purpose of suing it as part of a defensive strategy -- [not the first time Juniper has tried out-of-the-box defense tactics](#).) GraphOn, meanwhile, filed counterclaims in Virginia, alleging infringement on the products at issue in the Texas case.

During the last couple of months, the litigation has focused less on patents than venue. In January, Juniper's defense lawyers in the Texas action -- [Irell & Manella](#) -- [moved to transfer GraphOn's case to Northern California \(pdf\)](#). Meanwhile, in Virginia, Juniper's lawyers at [Kaye Scholer](#) [moved to transfer GraphOn's countersuit to Texas \(pdf\)](#). Since GraphOn's counterclaim did not relate to the patent for which Juniper had filed its Virginia infringement case, Kaye Sholer argued, it would be more efficient to move it to Marshall, where GraphOn's original case is pending -- for now.

"I have won jury trials in both jurisdictions," Juniper counsel Alan Fisch of [Kaye Scholer](#) told us in an e-mail. "Both venues offer patent sophisticated judges and hard working jurors. The issue here was about keeping similar patents together."

Not mentioned in [Kaye Scholer's](#) brief, but also likely a factor in the decision to seek a change of venue, was the trial date Juniper faced in each jurisdiction. GraphOn, represented by Michael Rounds of [Watson Rounds and Dabney Carr](#) of [Troutman Sanders](#), argued Juniper was trying to "game the system" by taking advantage of Texas's recent slow pace of litigation. (Carr referred a call to Rounds, who wasn't immediately available to comment.)

"Juniper filed its suit against GraphOn in [Virginia] because it hopes to reach trial before GraphOn reaches trial in its suit against Juniper in [East Texas]," GraphOn argued in a [June 2 brief opposing Juniper's transfer motion \(pdf\)](#). Trial in Virginia is expected to begin in December or January. In Texas, trial isn't scheduled until July 2010 -- and GraphOn says it could well be pushed back even farther.

Virginia federal district court Judge Gerald Lee sided with Juniper on Thursday, transferring GraphOn's counterclaims to Texas in a minute entry. But there's still a chance GraphOn could get back to Virginia. In a [brief filed on June 10 \(pdf\)](#), GraphOn asked that if its original East Texas suit is transferred, it be moved not to California but to Virginia to "prevent inconsistent rulings with respect to the rights and liabilities of the parties." Both the GraphOn motion and Juniper's motion to transfer out of Texas are pending.

This article first appeared on [The Am Law Litigation Daily](#) blog on [AmericanLawyer.com](#).

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